

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COMMUNITY DEVELOPMENT,
INC., et al.,

Plaintiffs,

vs.

SARPY COUNTY, NEBRASKA, et
al.,

Defendants.

8:16-CV-135

MEMORANDUM AND ORDER

This matter is before the Court on the plaintiffs' motion to remand (filing 6), the United States Magistrate Judge's Findings and Recommendation (filing 14) recommending that the motion be granted, and the defendants' objection to the findings and recommendation (filing 15).

The Court has reviewed the parties' briefs and the record *de novo*, pursuant to 28 U.S.C. § 636(b)(1)(C).¹ On its *de novo* review, the Court agrees with the Magistrate Judge, and will grant the motion to remand for the reasons capably explained by the Magistrate Judge. The Court will overrule the defendants' objection, adopt the Magistrate Judge's findings and recommendation, and grant the plaintiffs' motion to remand.

The Court will not, however, grant the plaintiffs' request for attorney fees. The Court recognizes that it may award fees pursuant to 28 U.S.C. § 1447(c) where the removing party lacked an objectively reasonable basis for seeking removal. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Conversely, when an objectively reasonable basis exists, fees should be denied. *Id.* Although the Court believes that the legal issues presented here are clear, the Court finds that those issues are complex enough that the defendants' removal to federal court, while incorrect, was not objectively unreasonable. Attorney fees are not warranted.

Having decided that the case must be remanded, the Court will deny the defendants' pending motion to dismiss (filing 4) as moot, without

¹ Although the Eighth Circuit has not ruled on the question, every circuit court to have decided the issue has concluded that a motion to remand should be treated as a dispositive matter in which only the Article III judge may enter an order. See *Davidson v. Georgia-Pac., L.L.C.*, 819 F.3d 758, 763-65 (5th Cir. 2016) (collecting cases).


prejudice to reasserting those arguments in state court, should the defendants decide to do so.

IT IS ORDERED:

1. The defendants' objection (filing 15) to the Magistrate Judge's Findings and Recommendations is overruled.
2. The United States Magistrate Judge's Findings and Recommendation (filing 14) are adopted.
3. The plaintiffs' motion to remand (filing 6) is granted.
4. The defendants' motion to dismiss (filing 4) is denied without prejudice as moot.
5. This case is remanded to the District Court for Sarpy County, Nebraska.

Dated this 11th day of July, 2016.

BY THE COURT:



John M. Gerrard
United States District Judge